IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8158 OF 2004

Dagdu Bhikaji Pawar... ... ... Petitioner.

Versus

Parvatabai Ranu Borade & Anr.. ... Respondents.

Mr. M. M. Sathaye for the Petitioner.

Mr. R. D. Metkari for Respondent Nos.1 & 2.

CORAM : S. A. BOBDE, J.

DATED : 13TH JUNE, 2005.

P.C.:

Rule.

2. Mr. Metkari, learned Counsel appears and waives service of Rule on behalf of Respondent Nos.1 and 2.

3. Rule made returnable and heard forthwith by consent.

4. This Petition is directed against the order of the II Jt. Civil Judge, Senior Division, Nashik dated 5th August, 2004.

5. By the impugned order, the learned Civil Judge has declined to appoint a Commissioner. Having regard to the nature of the controversy, namely, whether the Defendant has encroached on the Plaintiff's land, it is difficult to appreciate the observation of the trial Court that the appointment of the Commissioner, whose appointment was sought for ascertaining the area of the encroachment, would result in collecting evidence. In a case of this nature, it is obviously exigent to appoint a Commissioner. Also having regard to the law laid down by this Court in **Kashinath Chindhuji Shastri v/s Haribhau Nathuji Bawanthade**, 2004(2) Mh.L.J. 722, Rule made absolute. The trial Court is directed to appoint a Commissioner and take appropriate proceeding in accordance with law.

6. Writ Petition is, accordingly, disposed of. No order as to costs.

Sd/-

(S. A. BOBDE, J.)